

The Gazette of India



EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 97] NEW DELHI, SATURDAY, APRIL 25, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 21st April 1953.

S.R.O. 783.—WHEREAS the election of Shri Gulabrao Dadasaheb Mulik of Pandare, Baramati Taluka, Poona District, as a member of the Legislative Assembly of Bombay from the Baramati constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Marutrao Bhaurao Shelke of Baramati, Poona District, and Shri Nanasaheb Bapuji Jagtap of Dhakale, Baramati Taluka, Poona District;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, POONA.

Ex. No. 138.

AT POONA.

ELECTION PETITION No. 6 of 1952.

CORAM:

Shri Pramod C. Bhat, B.A., LL.B.—*Chairman.*

Shri Y. K. Ghaskabdi, B.A. LL.B. }
Shri S. B. Jathar, B.A., LL.B. } *Members of the Election Tribunal.*

Petitioners

1. Shri Marutrao Bhaurao Shelke, residing at Baramati.
(Pleader: Shri V. B. Deshmukh).
2. Shri Shrirang Satwa Sonavane, residing at Baramati, Tal. Baramati.
(Pleader: Shri V. B. Deshmukh).
3. Shri Balasaheb Patilbuwa Gite, residing at Hol, Tal. Baramati.
(Pleader: Shri A. D. Kale).

Vs.

Respondents

1. Shri Gulabrao Dadasaheb Mulik, residing at Pandare, Taluka Baramati.
(Pleaders: Shri B. D. Bal and Shri P. H. Kothadiya).

2. Shri Shrirang Satwa Sonavane, residing at Baramati, Tal. Baramati.
(Pleader: Shri S. R. Kharat).

The District Government Pleader Shri B. M. Tarkunde, present for the Advocate General, Bombay.

JUDGMENT

This petition under Section 81 of the Representation of People Act, 1951, (hereinafter referred to as the Act) has been made to the Election Commission jointly by two petitioners viz., Shri Marutrao Bhaurao Shelke and Shri Nanasaheb Bapuji Jagtap (hereinafter referred to respectively as petitioners Nos. 1 and 2) against the three respondents viz., Shri Gulabrao Dadasaheb Mulik (hereinafter referred to as Respondent No. 1), Shri Balasaheb Patilbuwa Gite (hereinafter referred to as Petitioner No. 3) and Shri Shrirang Satwa Sonavane (hereinafter referred to as Respondent No. 3) calling in question the election held on 11th January 1952 of the Bombay Legislative Assembly from the Baramati constituency (District Poona.)

2. By their petition the Petitioners prayed for (a) a declaration that the election of Respondent No. 1 was void and against law, (b) a declaration that the whole of the election was totally void, and (c) costs of the petition from respondent No. 1.

3. The petition has been referred to us by the Election Commission for disposal according to law.

4. The Petitioners and the Respondents were contesting the election of the Bombay Legislative Assembly from the Baramati constituency which is comprised by 40 villages divided into 52 polling stations. The Petitioner No. 1 was contesting the said election as an Independent candidate and Petitioner No. 2 as a nominee of the Peasants and Workers' Party. Respondent No. 1 was contesting the election as a Congress nominee, petitioner No. 3 as an independent candidate and Respondent No. 3 as a nominee of the Scheduled Castes Federation.

5. The election was held on 11th January 1952 and the counting of votes was on 14th January 1952. In the result, respondent No. 1 polled 17,973 votes, petitioner No. 1, 3,836 votes, petitioner No. 2, 6,380 votes, petitioner No. 3, 1,592 votes and Respondent No. 3, 670 votes. Respondent No. 1 was, accordingly, declared duly elected.

6. The election has been challenged on various grounds contained in the petition of the petitioners. It is alleged that at the said election undue influence has extensively prevailed and this has been particularised in the appendix or particulars attached to the petition wherein it is stated that the poor and illiterate voters of the constituency have been threatened by Respondent No. 1 and his workers who warned them that unless they voted for the Respondent No. 1, the Congress nominee, their ration would be stopped, that they would be prosecuted under the Prohibition Act and that they would get no quota of iron, steel and cloth in the distribution and that the Muslim voters would be sent to Pakistan. The names of the voters who were thus threatened have not been mentioned in the particulars, the ground stated being that this might lead to their being further threatened.

7. The petitioners further allege that the result of the election has been materially affected by the improper acceptance of invalid ballot papers inasmuch as an indeterminate number of invalid ballot papers was accepted and counted. This has been amplified in the particulars as follows:—That the Assistant Returning Officer realised on 11th January 1952 at 9 A.M. the danger of issuing ballot papers to voters without stamping them with an official seal and thereafter he immediately took a car and went round directing the Presiding Officers to stamp the ballot papers with the official seal before issuing them to the voters. Accordingly, those of the Presiding Officers that received this direction started the stamping but in no case did such stamping start earlier than 9 A.M. and in some polling stations there was no such stamping throughout the day. The result of the election is, therefore, said to have been materially affected by the acceptance of a large and indeterminate number of unstamped invalid votes. Actually the petitioner No. 1 made an application calling attention of the Returning Officer to this illegality and requesting him to reject the offending ballot papers that did not bear the official mark; alternatively, he also requested him to count them separately. The Returning Officer, however, ignored the request. Only on the next day at 2-30 P.M. he made a reply that all the ballot papers counted on the 14th instant contained serial numbers, distinguishing water marks and State Emblem (Ashoka) and that no other official mark was necessary.

8. Another allegation in the petition is that the election is vitiated by certain irregularities and illegalities. It is said that the officials of Government meted

out partial or preferential treatment to the Respondent No. 1 the Congress nominee. This has been particularised as follows.—The petitioners had submitter forms (in duplicate) of their polling agents for the respective polling stations along with the combined lists of these agents on 7th January 1952, that the Returning Officer while accepting the lists had returned the forms directing that the respective polling agents should submit them to the respective Presiding Officer. On 10th January 1952, however, at about midnight, petitioner No. 1 was informed by his polling agents that no polling agent whose form was not signed by the Returning Officer or the Assistant Returning Officer would be admitted in the polling booths. Thereupon, petitioner No. 1 saw the Assistant Returning Officer at 5 A.M. on 11th January 1952 and the latter thereupon issued instructions to the Presiding Officers to allow the polling agents admission in the booths. Even so, it was said, it was not until as late as between 9 A.M. and 12 noon that these instructions reached the Presiding Officers concerned, with the result that the polling agents of candidates other than the Congress candidate (Respondent No. 1) could not be present at the polling stations before the starting of the polling. This has robbed the petitioner of his right to inspect the ballot boxes through his agents before the election started and to satisfy himself that the ballot boxes were in order and has thus left the door wide open for mischief.

9. Another allegation is that the arrangement of the ballot boxes was not uniform in all the booths, and inasmuch as the canvassing was done on the basis of the serial number, the petitioners' voters have been misled into casting their votes in wrong boxes. Significantly, however, the position of the boxes of the Congress candidate has always remained the same. It has never varied.

10. Care was not taken by the Presiding Officers to seal the ballot boxes properly at the close of the election, the result being that the ballot boxes could be opened without damaging the seal. In some instances, even though the seals on the ballot boxes in certain polling stations were intact, the guarantee that those seals were genuine has been lacking and this has caused a reasonable apprehension in the minds of the petitioners that the ballot boxes could be tampered and must have been so tampered as to favour the chances of the Congress Candidate *viz.*, Respondent No. 1. That the petitioners had pointed out that the ballot boxes could be opened without damaging the seal, and that their polling agents were not allowed to see their signatures and seals at the time of the counting, that the strings of certain ballot boxes were found broken when the boxes were opened at the time of counting.

11. Further it was said that the symbols on the ballot boxes of the Congress candidate alone were repasted with the symbol. On some boxes the symbols were doubly pasted.

12. Lastly, it is alleged that respondent No. 1 and his workers had, in open public meetings, made false and defamatory allegations against petitioner No. 1 with the object of dissuading voters voting in favour of the petitioners, that these allegations were made by one Gulam Ali and other Congress workers of Respondent No. 1 in a meeting at Tandulwadi held on the night of 8th January 1952, that at another meeting held at Bhaji Mandai at Baramati which was going to be addressed by speakers of note from other districts, like Keshavrao Pawar, Anandrao Chavan and Yeshwantrao Mohite, the respondent and his workers created a serious disturbance by indulging in stone throwing and abuse and practically brought the meeting to a close. Respondent No. 1 was present. Similarly, in a third meeting where Mrs. Premalabai Chavan was one of the speakers, Respondent No. 1 and his workers similarly created a disturbance by throwing stones and by the use of filthy, abusive language. The result of it all, according to the petitioners, was that a few days prior to the election, the Respondent No. 1 and his workers had succeeded in creating an atmosphere of awe and terror and the petitioner No. 5. I had to issue a pamphlet to counteract the same. The suggestion is that an election in such tense atmosphere could not be a free election.

13. The Respondent No. 1 has put in his written-statement (Ex. 16) which is virtually a denial of all the material statements in the petition. He has contended that the joint petition is not tenable, that the petition is liable to summary dismissal by reason of the petitioners' failure to deposit Rs. 1000/- as per Section 117 of the Act, that the Petition is fundamentally defective as it is not accompanied by a list as required by Section 83(2) of the Act, and that the prayer for more than one relief is contrary to the provisions of Section 84 of the Act and vitiates the petition. He has denied the allegations of undue influence, coercion and intimidation made in the petition and in the appendix attached to the petition adding that even if established they are insufficient to invalidate the election. It was denied that the Returning Officer accepted invalid ballot papers as

alleged, and it was said that assuming that he did, the Respondent No. 1 was not responsible for the mistakes of the officers, that the mistakes, if any, would not vitiate the election. It was contended that the objection grounded on the officers' errors in the conduct of the election could not avoid the election which should be presumed to be perfectly regular and legal until the contrary was proved. The Respondent denied that any preferential treatment as alleged was meted out to him. He alleged that in common with the petitioner he himself had suffered a similar grievance. It was denied that the ballot boxes were wrongly arranged as alleged. It was stated that no complaint of improper sealing of the ballot boxes by any Presiding Officers was made by the Petitioners, and that the double pasting on the ballot boxes of the respondent No. 1 was due to the accidental fading out of his symbol which the authorities on their attention being called to it by him, rectified. It was denied that threats were given as alleged relating to the ration, the levy and the expatriation to Pakistan of the voters as alleged. It was also denied that the Respondent or his workers ever made false or defamatory allegations or threw stones at meetings as alleged or threatened voters with prosecutions under the Prohibition Act. That necessary details were not given in this behalf.

14. The Respondent asserted that the Election Commission had made no order regarding stamping of ballot papers, nor was stamping necessary as there was already a water mark on each paper.

15. He denied that preferential treatment as alleged was given to him or his workers.

16. The original Respondent No. 2 in the main supported the allegations made in the petition except that he denied knowledge of the allegation in the petition of the exercise of coercion and intimidation practised upon certain communities, groups and sections of other communities and also with regard to the confidential circulars said to have been issued by Government purporting to help respondent No. 1. He denied the allegation that the agents of Respondent No. 1 only were allowed in the booths. He denied knowledge of the alleged threats having been given to poor and illiterate agriculturists unless they voted in favour of the Congress but added that he had seen that certain workers of the Congress candidate had threatened some people like that. He also denied knowledge of the threats to the Muslim voters of expatriation to Pakistan and the knowledge of the alleged defamatory statements against the petitioners in open meetings. He added, however, that some workers of the respondent No. 1 did create disturbances in open meetings and created terror in the minds of the people. He further asserted that he was unable to say that the election was a free and an independent election, that it was vitiated by the way the ballot boxes were handled, opened and sealed and the finding of ballot papers in the ballot boxes without any seal. On these grounds he supported the petitioner in his prayer for a declaration that the election was void due to "abnormal circumstances" "Mal practices". In the light of this written-statement of Respondent No. 2 we made an order on 3rd October 1952 transposing the Respondent No. 2 as petitioner No. 3 (See Ex. 23). The pleader for respondent No. 3 Sonavane entered a "no instructions" purshis (Ex. 18) and consequently there is no written-statement made in this behalf.

17. On these pleadings nine issues have been joined and upon the hearing of this matter the learned counsel for the Petitioners in limine has wisely abandoned issue No. 7.

18. As regards the remaining issues, the controversy has mainly centred round issues Nos. 5 and 6, but before dealing with these, will, we think, be convenient to dispose of the first four issues which have been canvassed before us by counsel for Respondent No. 1. The issues are at Ex. 27 and our findings thereon are recorded at the end of our judgment.

19. Briefly, the contention has been that a petition jointly in the names of more than one Petitioner is incompetent, the ground being that the Act provides only for a petition by a single petitioner and this of necessity excludes, and therefore prohibits a joint petition by more than one petitioner and it, therefore, also follows that the deposit of Rs. 1000/- by two petitioners is inadequate and vitiates the petition. On these grounds we are invited to dismiss the petition.

20. We think there is no substance in this contention. When one turns to Chapter 2 of the Act dealing with presentation of election petitions to the Election Commission, it is true that one finds that Section 80 to 85 which comprise that chapter invariably speak of "the petition" or "the petitioner" in the singular and never in the plural. But it is obvious that the words "the petition" and "the

Petitioner" (singular) connote a class or a category as distinguished from a single entry and we hold that the singular includes the plural. In this connection, by way of analogy a reference might usefully be made to Section 13 of the Bombay General Clauses Act which is as follows:—

"In all Bombay Acts, unless there is anything repugnant in the subject or context,....."

(b) Words in the singular shall include the plural, and *vice versa*."

Then again Sections 110 and 112 clearly envisage a joint petition by more than one petitioner and it is futile to suggest that the Act intended to prohibit a petition in the name of more than one petitioner.

21. Stress was laid on Section 82 of the Act and it was argued that the wording of Section 82 clearly supported the contention that the petition must necessarily be in the name only of a single petitioner. Now Section 82 is in these terms: "A petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated". It is difficult to see how Section 82 helps, because it only provides for the joinder of the respondents to an election petition and has hardly any bearing on the point under debate. We are clear that Section 82 certainly does not prohibit a petition in the joint names of more than one petitioner and that respondent No. 1's contention to the contrary must fall.

22. A Joint petition then being valid and competent, it follows in our opinion at the requirements of Section 1 of the Act providing for the deposit of Rs. 1000/- with the petition (a joint petition in this case) are satisfied and are not infringed.

23. It was urged by counsel for the respondent No. 1 that the petition was defective for want of a list as required by Section 83(2) of the Act. That being so, we ought to exercise our powers under clause 4 of Section 90 of the Act and should dismiss the petition for failure to comply with the provisions of Section 83 clause (2). In our view the petitioner has in his list of particulars given particulars as sufficiently as was possible and prudent. We have further taken particular care to restrain petitioner from making any new case not alleged nor involved in the pleadings. After all, the object of clause 2 of Section 83 is plainly to prevent the opponent being taken by surprise and we are satisfied in this case that no such surprise has been caused to the opponent, nor was an opportunity to meet the case made by his adversary withheld or denied to him.

24. It is further argued that the joinder of more than one relief in the petition would invalidate it. This is the subject matter of issue No. 8. Reliance is placed on Section 84 of the Act which provides that a petitioner may claim anyone of the declarations therein mentioned and connected by the disjunctive "or". It is said that in Section 84 of the Act, emphasis is plainly on the words "anyone" which would preclude more than one reliefs beings asked for. Section 98 dealing with our power in relation to the reliefs claimable is very similarly worded and might lend support to this contention.

25. We think, however, that there is no substance in this contention. The truncated construction of Section 84 which we are invited to accept is, we think, not warranted on a fair interpretation of the section. When one examines the section, one finds that the three declarations mentioned therein in substance are neither separate nor exclusive. They overlap. The declaration (b) includes (a) and the declaration (c) includes (a) and partly (b). This indicates, we think, that a petitioner is not restricted only to asking for one single relief. We see nothing in the section to prevent a petitioner praying for one or more of the three reliefs mentioned in the section. Be that as it may, we consider it unnecessary to pursue the point further as we have reached the conclusion that this petition should be dismissed on other grounds. We, therefore, refrain from expressing a final view on the question.

26. This brings us to a consideration of the more important points in the case which are the subject matter of issues Nos. 5 and 6. The case as laid in the petition was that the Election Commissioner had, in fact, given a direction to use an official mark (This was inferred from the fact that the petitioner noticed that certain officers had, in fact, issued ballot papers after stamping them with the official mark), that there were a number of ballot papers which did not bear such official marks and were invalid and that the Returning Officer had counted the valid with the invalid ballot papers and since the number of such ballot papers was indeterminate, it was impossible to ascertain the number of really genuine

ballot papers. The election, therefore, it was said, had been materially affected to the detriment of the petitioner. The appendix annexed to the petition further stated that as ballot papers of one constituency could be used in any other constituency, to prevent such mischief it was necessary to provide for the stamping of the ballot papers with an official mark at each polling station and then the petition (appendix) goes on to say that on 11th January 1952 the Assistant Returning Officer finding at about 9 A.M. that the ballot papers were being issued without any official mark immediately went round in his car directing Presiding Officers to stamp the ballot papers with an official mark or seal before issuing them to the voters. The case as laid in the petition thus was that it was only ballot papers bearing the official seal that were valid and that the rest not bearing the official seal were invalid. The invalidity alleged in the petition, therefore, attached to the ballot papers which were issued prior to 9 A.M. on 11th January 1952. But the petitioner changed this case and his contention before us now is that his objection is not to the ballot papers which did not bear an official seal but to those that did. It is thus clear that the case as unfolded in Court is in the direct opposition to the one laid in the petition. The Mamlatdar (Ex. 102) has stated in his evidence that when the election started on the 11th, at some place ballot papers were not sealed, that therefore, he issued instructions with regard to the sealing of each ballot paper before its issue, that he first went to the Darubandi Kendra where Shri Gunjal the Civil Judge was the Presiding Officer, at 9 or 9-30 A.M. and instructed him with regard to the seal, that at the time of counting he noticed that at some polling booths no ballot paper bore any seal. He could not definitely say whether the instructions to seal were actually delivered to the various polling booths in the constituency outside Baramati. That he issued instructions with regard to the sealing of the voting paper on reading Rule 20 of the Election Manual. That he visited all the centres in the Baramati town and gave the instructions there. By stamping the ballot paper he meant sealing the same with the brass seal bearing Ashok Chakra with three lions, with the ink. He could not say whether the Election Commission had directed that this particular mark shall be fixed to the voting paper before that was delivered to the elector. Then he goes on to say that there was a discussion in the morning between him and his Head Karkun and that thereafter he issued the instructions to seal the ballot papers on the day on his own initiative. He says that the Returning Officer treated all these ballot papers on the same basis, whether they bore the seal aforesaid or they did not, that the discussion between him and Mahajan his Head Karkun was as to what seal should be used. As far as he knew, no directions had been issued by the Election Commission asking that the ballot papers should be marked with an official mark. In the discussion he had with Mahajan they concluded that the ballot papers should bear some sort of a seal. He is supported by Jayant Gunjal, Ex. 84, who was a Presiding Officer at Baramati polling station. He says that the Assistant Returning Officer Shelke asked him to affix a seal to every ballot paper. A brass seal and ink was supplied. And all ballot papers issued after 9 A.M. were sealed accordingly. Then Shankar Dange's evidence (Ex. 105) is that he never received any instructions with regard to the sealing of the ballot papers. He did not seal any voting paper on that day.

27. Now, we have permitted Mr. Rege to make out the case which is in opposition to the one contained in the petition for the reason that we thought that no new facts were sought to be alleged at the hearing. For the rest it was a matter of opinion as to what ballot papers invalidity would attach. Evidently at the time of drafting the petition it was thought that inasmuch as the Mamlatdar had issued instructions to seal the voting papers before issue, it followed that only those ballot papers which bore the seal were valid. But at the time of evidence it was apparently realised that in the light of Ex. 135 this was incorrect and that the challenge ought to be to the validity of ballot papers issued after 9 A.M. and bearing an official seal. In any case, evidence has been led as to the circumstances in which the ballot papers issued after 9 A.M. on the polling day came to bear an official seal and we do not think that a different line of attack practically on the same facts has caused prejudice or surprise to the opponents.

28. Now, it is necessary in this connection to refer to Rules 20, 28 and 47 of the Rules made by the Central Government under Section 169 of the Act. Rule 20 so far as material provides that the Election Commission may direct that before any ballot paper is delivered to an elector, it shall be marked with such official mark as may be specified by the Election Commission. Now Ex. 135 shows that the Election Commission had issued no directions nor had specified any mark under this Rule. Rule 28 so far as material provides that the ballot paper to be used for the purpose of voting at an election shall contain a serial number and such distinguishing marks as the Election Commission may decide. Ex. 135 shows

that under this Rule the Election Commission had decided that before the printed serial number in each ballot paper there shall be printed as a prefix the letters "BY" in the case of the ballot papers to be used in the State of Bombay. Now Rule 47 so far as material provides that a ballot paper contained in a ballot box shall be rejected if (a) it bears any mark or writing by which the elector can be identified; (b) in the case where a direction has been issued under Rule 20 that the ballot paper shall contain an official mark, it does not contain the official mark; (c) if it bears any serial number or mark different from the serial numbers or marks of ballot papers authorised for use at the polling station or the polling booth at which the ballot box in which it was found was used. And Mr. Rege relying on the evidence and the Rules aforementioned says that in the case with which we are concerned some or most of the ballot papers issued after 9 A.M. bore the serial number and the mark "BY" and in addition they also bore the official seal which was directed by the Mamlatdar to be stamped on those papers, and he says that in this case invalidity much attaches to ballot papers bearing the said official seal, in addition to the water mark, the serial number and (as a prefix) the letters "BY". This is plain on a reading of Rules 28 and 47. Rule 28, says Mr. Rege, affirmatively lays down what the ballot paper shall contain, viz., a serial number, and such distinguishing marks as the Election Commission may decide. And Rule 47 lays down what the ballot paper shall not contain viz., amongst other things it must not bear a serial number or mark different from the serial numbers or marks authorised for use at the polling stations. Ergo, says Mr. Rege, ballot papers bearing the seal in addition to the serial number and the distinguishing mark as authorised — st be thrown away as invalid. Mr. Rege, therefore, argues that the result of — election has been materially affected by the improper reception of void votes and also by non-compliance with the provisions of the Rules relating to the election. Mr. Bal for the opponent has contended that the pre-requisite condition of the applicability of Rule 37 clause (c) is the existence of the directions issued by the Election Commission under Rule 20 and as admittedly in this case no instructions had been issued by the Election Commission under Rule 20, the fact that the Mamlatdar, ex-majore cautela, thought it necessary to issue directions to the Presiding Officers to impress an official seal may be an error or an irregularity, but it certainly does not invalidate the ballot.

29. In this case there is little dispute as to the facts, the only facts material for our purpose being (1) that most of the ballot papers which were issued after 9 A.M. bore the official seal as per the directions of the Mamlatdar. It is common ground that the Election Commission itself had issued no directions under Rule 20. The question, therefore, that we have to determine is whether ballot papers bearing an official seal should be held to be void and (2) if we reach the conclusion that they are void, then the further question will be whether there is material before us to enable us to reach the conclusion that on that account the result of the election has been materially affected. We have very carefully weighed the arguments addressed to us on both sides and we have reached the conclusion that the attack made by the petitioner must fail. For one thing we feel considerable difficulty in accepting the argument made by Mr. Rege that notwithstanding the absence of any directions by the Election Commission under Rule 20 we must hold that the ballot papers in question as void. They undoubtedly bear the serial number and the prefix "BY". It was this ballot paper that was authorised for use at the election. True, some or many other ballot papers also bear the official seal in addition. But we think that it is impossible to regard these ballot papers as hit by clause 3 of Section 47 in the admitted absence of a direction of the Election Commission under Rule 20. In our view this is an instance of ignorance or error on the part of local officials which ought not to be permitted to jeopardise an election otherwise valid. A formal departure from the mode of holding an election as prescribed by the statute or the rules which does not deprive legal voters of their right to vote or permit illegal voters to participate in the election or cast uncertainty on the result cannot affect the validity of the elections, nor do we think that the departure in this case offends against clause (c) of Rule 47.

29. The Petitioner has stated in his petition that most of the Presiding and Polling Officers refused to give to the polling agents of all candidates a free scope and equal latitude. It is said that they refused permission to the polling agents of the candidates other than the Congress candidate to enter the polling booths. In the appendix annexed to the petition this has been amplified as follows:—That the petitioners had submitted the forms of their polling agents along with the combined list of those agents on 7th January 1952. The Returning Officer, however, returned the forms merely accepting the lists and he told the petitioners that the respective polling agents should submit their forms to the respective Presiding Officers. However, on 10th January 1952 at about midnight petitioner No. 1 was informed by his polling agents that no polling agent whose form was not signed by the Returning Officer or the Assistant Returning Officer would be allowed to enter.

the polling booth. The petitioner No. 1 approached the Returning Officer at about 5 A.M. on 11th January 1952 and the latter directed the Polling Officers to allow the polling agents to enter the booth. But this was too late with the result that the polling agents of the Congress candidate alone got access to the polling stations immediately before the start of the poll. Presumably before the start of the poll the boxes were examined and sealed in the presence merely of the agents of the Congress candidate, that is to say the respondent No. 1. And the contention is that this amounts to a corrupt practice within the meaning of Section 123 clause (8) in that it constitutes assistance resulting in the furtherance of the prospects of the Congress candidate from Government officials and under Section 100 clause 2(c) invalidates the election. Before going into the merits of the contention, it is necessary briefly to refer to the relevant sections and the rules on the point. Section 123 clause (8) so far as material says that the obtaining.....by a candidate.....any assistance for the furtherance of the prospects of the candidates' election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person shall be deemed to be a corrupt practice. Section 100 clause 2(a) lays down that the Tribunal shall declare the election of the returned candidate to be void if the Tribunal is of opinion that the election of a returned candidate has been procured or induced or the result of the election has been materially affected by any corrupt or illegal practice. Clause 2(b) of the same section says that the same result would follow if any corrupt practice specified in Section 123 has been committed by a returned candidate or his agent or by any other person with the connivance of the returned candidate or his agent. And clause 2(c) says, the same result would follow if the result of the election has been materially affected, among other things, by any non-compliance with the provisions of the rules relating to the election or by any mistake in the use of any prescribed form. It is common ground that the agents of the petitioner were refused entrance in the polling booths at least till 9 A.M. on the election day. But respondent No. 1 has contended that this was no preferential treatment as alleged because the Returning Officer had followed a uniform procedure with regard to the acceptance of agents' lists and that he himself, amongst others, had to approach the Returning Officer to point out the eventuality of the Presiding Officers not admitting the agents to polls if the validated forms or instructions were not sent to them. In other words, he says that this grievance was not peculiar only to the petitioners' agents but was common to all the agents. We are not impressed by this contention because we think that if it is established on the evidence that the petitioners' agents were not allowed access to the polling booths before the start of the election, then the consequences whatever they are under the law, must follow and it will be no answer to say that they ought not to follow because this grievance was common to other candidates as well.

30. Now turning to the evidence, we have, first, the evidence of the petitioner. He says he supplied the list of his polling agents to the Returning Officer on the 7th but that his agents were not allowed in the polling booths by the Presiding Officer at the time of the sealing of the ballot boxes. The polling agents of the Congress nominee alone were allowed at that time. That the 7th was the last day for submitting the list of the polling agents and that the lists on behalf of all the candidates were accepted and the forms were returned for presenting to the respective Presiding Officers and that on the midnight of the 10th he learnt that his polling agents were not allowed to enter the polling stations as their names were not reported to the Presiding Officers by the Returning Officer. That petitioner No. 2 had made similar complaints to the Assistant Returning Officer and that he also subsequently learnt that the respondent No. 1 also had similar difficulties and had made similar complaints to the Returning Officer. The evidence of Sambhaji Ganpat Kadam (Ex. 101) who was a Presiding Officer at Baburdi in Baramati Taluka, is that there was no polling agent present at his polling station on behalf of petitioner No. 1, in the morning; that after 10 A.M. on the day of the election some persons attended the polling station with the order that they were the polling agents on behalf of petitioner No. 1; that they had also come on the 10th but that he did not allow them to enter the station on the ground that he had received no instructions from the Mamlatdar that they were the polling agents of petitioner No. 1. Then the evidence of Udhav Shelke the Assistant Returning Officer in the Baramati Taluka (Ex. 102) is that most of the candidates at the election complained that the authority was not issued to the polling agents by the Returning Officer. Petitioner No. 1 saw him on the night of the 10th of January and complained about the non-receipt of the authority by his polling agents, and then he issued the necessary authority and sent a copy thereof to the various Presiding Officers the same night. Elsewhere in his evidence he says that respondent No. 1 had complained to him about the authority of the polling agents. He

denies that he refused to issue authority to the polling agents when they complained to him. He thus issued authority to the polling agents of all the candidates who came to him for that purpose. Shankar Tukaram Dange (Ex. 105) who was also a Presiding Officer at Korhale says "the polling agents of petitioner No. 1 had come to the polling station that day at about 7 A.M. I did not allow them inside as they had no authority with them. I thereafter received instructions from the Mamlatdar in regard to their authorisation after 10 A.M. I thereafter allowed them in the polling booths". He also says that he did not allow any polling agents inside the booth who had no authority from the Returning Officer or from the Assistant Returning Officer and that he allowed polling agents who had authority with them, immediately. The respondent No. 1 in his evidence at Ex. 124 has deposed that he made enquiries with the Mamlatdar at 10 P.M. on the night of the 10th and that at that time the polling agents of the petitioners Nos. 1, 2 and 3 had come there making the same grievance, that the Mamlatdar thereupon gave them the requisite authorisation and offered to send the lists of such authority to the Presiding Officers. Elsewhere in his cross-examination the respondent No. 1 has stated that at Korhale polling booths no polling agent of any candidate was allowed inside the polling booth till 11 A.M. on the day of the election.

31. Two things emerge from this evidence which we see no reason to disbelieve. Firstly, that the polling agents of the petitioner as also the polling agents of some other candidates including probably the Congress candidate respondent No. 1 were refused admission in the booth at the start of the election in the early morning of the 11th. Secondly, the ground for not admitting the polling agents was the non-receipt of the requisite authority from the Mamlatdar or his assistant. The Mamlatdar was the Assistant Returning Officer. The question, therefore, arises whether the receipt of authority from the Returning Officer is a pre-requisite of the polling agents' right to be in the booths. To answer this question, it is necessary to turn to the relevant rules and form VI appended to the Rules. Under Rule 12 each validly nominated candidate is required to appoint one agent and two relief agents three days before the commencement of the poll to act as his polling agents. The candidate or his agent must, in any case, at least three days before the commencement of the poll, forward to the Returning Officer the letter of appointment. Then the candidate or his agent must give the polling agent the duplicate copy of the letter of appointment. Then on the day of polling the Polling Agent must present this copy to the Presiding Officer and must also sign the declaration therein before the Presiding Officer. Form 6 to the Rules prescribes the mode both of the said appointment and the declaration. Sub-rule (3) of Rule 12 says that no polling agent shall be allowed to perform any duty at the polling station unless he has complied with the provision of this sub-rule. Then under Rule 21 the polling agent in whose case the requirements of Sub-Rule 3 of this Rule 12 are satisfied, has a right to be present in the booth immediately before the commencement of the poll to inspect the ballot box and to thoroughly satisfy himself, amongst other things, that the same is in order in all the details elaborately referred to in Rule 21. Therefore, all that is required under the rules is that (1) the appointment by the candidate of his polling agents and (2) a duplicate copy of the appointment to be given to the agent, one copy being sent to the Returning Officer under clause 2 of Rule 21. Then the letter of appointment, a copy of which is given to the agent, has to be taken to the Returning Officer for the purpose of a declaration in the manner mentioned in Form VI. This gives him a right of admission to the polling booth and although it is true that Rule 12 clause (2) requires a copy of such appointment to be sent to the Returning Officer, still under sub-rule 3 of Rule 12 it is obvious that this is not a necessary condition of the agent's right to be in the booth immediately before the commencement of the poll. The non-receipt of this notice by the Presiding Officer with or without a further authority in that behalf by the Returning Officer to the polling agents could not possibly justify a refusal to admit a candidate who has properly made the declaration mentioned in Form VI. In our view, it is the letter of appointment by the candidate coupled with the declaration by the appointed agent in Form No. VI that is all that is necessary to enable the candidate's agents to be present in the booths at the start of the election. It is true that the presence of the polling agents in the booths before the start of the election is a matter of importance in that it gives the persons concerned an opportunity to satisfy themselves before the poll has started that the boxes are in order in every way. Even so we are unable to hold that this is a sufficient ground for invalidating the election. It certainly does not come under any of the provisions of Section 123 of the Act. The officers concerned with the conduct of the election seem to have committed a *bona fide* mistake in refusing to admit the candidates on a ground that was wholly untenable, and it has been contended by the petitioners that as a result of this there have emerged certain disquieting features in the conduct of the election e.g. that in some places it is said that it was found that some ballot boxes could be opened without damaging the seal etc.

However, the petitioner has not chosen to pursue the point and to establish it by leading evidence in that behalf,—and we ourselves do not feel very happy about it,—but in the absence of any evidence on the point we must hold that it all amounts to a *bona fide* mistake on the part of the officials responsible for the conduct of the election not resulting in any prejudice to the candidates, and we are entitled, in these circumstances, to invoke Section 51 which says that where any act or thing authorised by or under this Act to be done in the presence of polling or counting agents, the non-attendance of any such agent or agents at the time and place appointed for the purpose shall not, if the act or thing is otherwise duly done, invalidate the act or thing done. We must assume that the ballot boxes were in order and that everything in relation to them was duly done.

32. A more serious objection has been made on the score of undue influence, coercion and intimidation said to have been practised upon the voters. The petition avers that the election of respondent No. 1 has not been a free election by reason that undue influence has extensively prevailed at the election and that coercion and intimidation have been exercised and resorted to by respondent No. 1 upon certain communities, groups and sections of other communities to vote in his favour. This is amplified in the appendix by the statement that the Congress candidate and his workers have taken advantage of the Government being a Congress Government and have threatened the poor and illiterate voters if the Constituency with the stoppage of ration and trouble at the time of the collection of levy from them and that the quota at the distribution of iron and steel and of cloth, a matter in the hands of the Congress committee, would be adversely affected unless the voters voted for the Congress candidate. The case made in the petition is, at or about the time of the elections in certain propaganda meetings respondent No. 1 and his workers openly made false and defamatory allegations against the petitioner with the object of influencing the voters and indulged in stone throwing and vile abuse. One such meeting was said to have been held on 8th at Tandulwadi at which one Gulam Ali, a Congress worker and agent of respondent No. 1, made a scurrilous attack on the personal character of petitioner No. 1. The petitioner further refers to a meeting held at Bhaji Mandal, at Baramati where it is said that Respondent No. 1 and his workers threw stones. This was going to be addressed by Keshavrao Pawar, Anandrao Chavan and Yeshwantrao Mohite. Respondent No. 1 is said to have been personally present at this Bhaji Mandal Meeting. There was a third meeting where one of the principal speakers was one Mrs. Premalabal Chavan where the respondent No. 1 and his workers indulged in stone throwing, and it is said that by their behaviour in the meetings the respondent No. 1 and his workers succeeded in creating an atmosphere of awe and terror a few days before the election. Petitioner No. 1 had indeed to issue a pamphlet to counteract this ugly development. An election held in such circumstances could not, it is urged, be regarded as a free election.

33. We will deal first with the meetings referred to in the petition. The gravamen of the charge if course is that the effect of the behaviour of respondent No. 1 and his workers at these meetings was to invalidate the election under clauses (a) and (b) read with the Explanation of Section 100 of the Act. It will be seen that the petition refers to three meetings, one at Tandulwadi at Baramati on the night of the 8th where one Gulam Ali is said to have employed highly defamatory language with reference to the petitioner. The other one was the meeting the date of which has not been mentioned in the petition, but the evidence is that this meeting was on 5th January 1952. The third and the last meeting was at Bhaji Mandal (at Baramati) on the 21st of December 1951 and the principle speakers at this meeting were Keshavrao Pawar, Anandrao Chavan and Yeshwantrao Mohite. In his evidence recorded at Ex. 124 respondent No. 1 says "My propaganda meetings were held at Bhaji Mandal and Darubandi Kendra before December 1951 at Baramati. No meeting held at Tandulwadi was in connection with my election propaganda". He has further denied that Gulam Ali Karim Ali was his agent or that he was a Congress worker. He has further said "I never attended the meetings sponsored by any party except the Congress. It is not true that I was present at the meetings held under the presidency of Taware at which Anandrao Chavan, Yeshwantrao Mohite and Keshavrao Pawar addressed the meetings on the 21st December at Baramati. On the 21st I had gone to Supa. I started from Baramati that day. Pandare is 6 or 7 miles from Baramati. The propaganda meeting at Supa commenced at 8-30 P.M. that day. Jiva Kothari, Udhav Ingule, Gulabrao Shelke and 5 or 6 others were with me at Baramati to Supa that day. I returned from Supa after 12 midnight."

34. With regard to the meeting of 8th January 1952, it is significant that the petitioner in his evidence recorded at Ex. 85 says that he has no written evidence to show that Gulam Ali was the agent of the respondent No. 1. Gulam Ali himself

has not been examined. Admittedly, there is a record with regard to the list of the authorised agents. But no such list has been produced, although the petitioner could well have got the Returning Officer to produce the record with regard to the authorised agents. That being so, even if we accept the other evidence on the point of Gulam Ali having made the defamatory statements he is alleged to have made at the meeting of 8th January 1952, the utmost that could be said is that Gulam Ali is the type of person who voluntarily interested himself in the election of the respondent. And the question, therefore, would be whether a person who voluntarily interests himself in a candidate at an election is to be regarded as his agent. We are of the view that it is impossible in the absence of some definite connection being established between Gulam Ali and respondent No. 1, to hold that he was an agent. It will be plainly unfair to fasten the acts of volunteers on the respondent. The petitioner has deposed that the Tandulwadi meeting was a propaganda meeting of respondent No. 1, an allegation which has been denied by respondent No. 1 in his evidence. Beyond the bare word of petitioner No. 1 there is no evidence to show that respondent No. 1 had anything to do with this meeting. We hold that it is not established that Gulam Ali was the agent of respondent No. 1 nor that the meeting at Tandulwadi was a propaganda meeting convened by or on behalf of respondent No. 1. Incidentally, the question whether an alleged defamatory statement said to fall within Section 123 clause 5 which *prima facie* is not calculated to prejudice the prospects of the candidate's election, can be used to challenge an election. In this case it has been said that the allegation cast aspersions on the moral character of the petitioner No. 1. Petitioner No. 1 has asserted that these allegations are totally false and we are prepared to accept his evidence on the point. However, it is difficult to come to the conclusion that it is calculated to prejudice the prospects of that candidate's election, because an aspersion against the moral character of a candidate at an election is one thing and an aspersion on the competency of the candidate for a seat in the Legislative Assembly is an entirely different proposition. We can well imagine cases of a majority of voters being left cold in spite of the onslaught made on the moral character of the candidate provided they are otherwise satisfied with regard to his competency. However, the matter is not free from difficulty and in the view of the evidence that we have taken in the case, it is not necessary to decide it. Then with regard to the meeting at which Mrs. Premalabai Chavan was one of the principal speakers, the petitioner in his evidence at Ex. 85 says that "petitioner No. 2 had asked Mrs. Premalabai Chavan to address a public meeting for his propaganda held at Baramati on or about 7th January 1952. I was present at the meeting. Respondent No. 1 was also present at that meeting. He and his workers created a row at the said meeting and pelted stones at the platform. One boy was injured on that account. I have issued a pamphlet with respect to the said incident". Now turning to the evidence of Mrs. Premalabai herself at Ex. 100, she gives the date of the meeting as on the 5th of January and says that she visited Baramati on that day for propaganda work on behalf of the Peasants and Workers' party from Patan Taluka constituency. Petitioner No. 2 was contesting the election on behalf of that party. A meeting was held at Bhaji Mandai at night on that day. It was a general meeting. It was also well attended. I was to address the meeting. At that time trucks loaded by boys passed by the side of the platform of the meeting and disturbed the same. There might be 4 or 5 trucks passing by. The boys were shouting slogans for the Congress. The trucks were passing at an interval of five minutes or so, one after the other. They were passing by the road just behind the platform. The trucks also had Congress flags. Soon after the commencement of the meeting, stones were being pelted from the trucks passing by the road. A boy sitting in front of me was injured by the stones. I held the boy up with his bleeding injury and showed to the people the working of Ahimsa of the Congress. The boy was sent to the dispensary immediately. The meeting could not be conducted then." In her cross-examination she admitted that at a distance of nearly 100 feet from the audience of the meeting there were houses of people, that stones were pelted in the meeting both from the backside and the front side, that she found stones coming from the direction of the backside of the platform. It is, therefore, not improbable that the stones which Premalabai thought came from the trucks full of Congress urchins shouting Congress slogans might have come from some mischief-makers in the houses beyond. Admittedly, the meeting was not advertised and even Premalabai does not allege that the trucks in dispute were passing the road behind the meeting because of the previous knowledge of a meeting to be held, nor does she say that any of these trucks stopped at the place where the meeting was convened. Then she also says that the boy injured at the meeting as a result of stone throwing was sitting on the platform and facing the audience which clearly shows that so far as this was concerned, the trucks that were going behind had nothing whatsoever to do with this injury. We are, therefore, not at all impressed by the evidence which has been led to connect respondent No. 1 or his agents with the disturbance that

was created at the meeting held on the 5th of January at which Mrs. Premalabai Chavan was the principal speaker.

35. Then coming to the last meeting at Bhaji Mandai, we think that the evidence with regard to this meeting also is equally unsatisfactory. The case for the petitioner No. 1 is that this meeting was held on the 21st of December 1951 and the allegation is the petition is that the respondent No. 1 was personally present at this meeting. The evidence of the respondent No. 1, however, is that he never attended this meeting, that actually he had his own propaganda meeting on the same day at Supa which commenced at 8-30 from which he returned at 12 mid-night. He has also further deposed that he never attended the meetings sponsored by any party other than the Congress. It is significant that the petition states that the Police had actually noted the name of respondent No. 1 at this meeting and the case further is that the respondent No. 1 and his workers had taken the law into their own hands and thrown stones and had practically stopped the meeting. If this were true, surely it was possible to establish this by producing the Police record of this meeting. But nothing of the kind has been done or attempted in this case. And in these circumstances, we are not impressed either by the allegation in the petition or by the evidence led by the petitioner in this connection. Curiously enough, the petitioner No. 1 himself says nothing about this meeting in his evidence. And Mohite in his evidence at Ex. 104 says about this meeting that Tavare was the President of the meeting, that Keshavrao Pawar had accompanied him to Baramati, then he first addressed the meeting, Anandrao Chavan addressed the meeting next. There might be some 7000 to 8000 people in the audience. After Anandrao Chavan had finished his speech, he was to go to the platform to begin his speech. About the time of the beginning, somebody put a paper containing interrogatories to be answered by them in the course of the meeting. In his speech he tried to answer the questions with reference to previous history. There was an uproar from the crowd in the meeting that history was not required. There was a combat and some persons in the meeting including Mulik respondent No. 1 tried to come up on the platform. They caught hold of the mike and obstructed him. The meeting thus ended. In his cross-examination, however, he admits that he did not know the respondent No. 1 till then but that on enquiry with the persons nearabout him with regard to those that approached the platform, he was told that one of them was respondent No. 1. Now this is clearly hearsay evidence, and therefore, inadmissible. He also further admits that he did not know any of the persons shouting the slogans and that he cannot say to which party they belonged. But apparently he says he inferred that they belonged to the Congress party from the slogans they shouted. Then, we have on this point the evidence of Tavare (Ex. 109) who presided at this meeting. In his evidence he said that "When Mohite (the last witness) rose to speak, he was also interrupted. Nayansukh Marwadi, Mulik, Gulam Ali and Jiva Kothari came to the platform and took possession of the mike. The meeting thus came to an end. And with regard to the interrogatories which really started the trouble, he says that he does not remember if any of the persons viz., Nayansukh Marwadi, Mulik, Gulam Ali and Jiva Kothari were the signatories to the leaflet; nor did he remember whether the signatories were Congressmen. He admits that there was a propaganda meeting on behalf of the respondent on the same day at Supa, but says that this meeting was scheduled to take place at 11 p.m. which on the face of it, sounds strange. On the whole, we are not satisfied that respondent No. 1 attended the meeting at all and we are prepared to accept the evidence of the respondent No. 1 that he was at the material time busy with his own propaganda meeting at Supa, a distance of some 50 miles from Baramati. We are further not satisfied as to what the interrogatories were about, whom they were by, and in the absence of material as to that, particularly in the absence of the interrogatories which are said to be in the nature of the pamphlet. It is impossible to hold that respondent No. 1 and his workers were in any way connected either with the meeting or with the alleged disturbance that stopped the meeting. We must, therefore, negative the contention of the petitioner with regard to his allegation of undue influence and coercion by reason of the alleged disturbance created by respondent No. 1 and his workers at the said meetings and must hold that no case has been made out under Section 100(b) read with the Explanation and sub-clause 2 of Section 123. Another objection which has been made by the petitioner No. 1 is that the voters were threatened by respondent No. 1 and his workers who abused their influence with the Congress Government and threatened poor and illiterate voters that unless they voted for respondent No. 1, their ration would be cut off, that they would be troubled at the time of collecting the levy from them; that they would suffer at the time of the distribution of iron, steel and cloth and they might also have to face false cases under the Prohibition Act. There is hardly any evidence worth the name in support of these allegations, not to mention the vagueness and the lack of

details or even how far these threats were capable of influencing any person literate or illiterate claiming or possessing ordinary commonsense. But the petitioner in his evidence has stated as follows:—"Respondent No. 1's agent Dhondiba Baravkar of Loni Bhapkar had gone to my agent Moreswar Laddkat at his vasti and there threatened him and his vasti-men that they must vote in favour of the Congress candidate; otherwise they would be troubled at the time of collecting the levy, that they would be remembered at the time of distribution of iron and steel and also cases under the Prohibition Act would be created against them. The threats also materialised inasmuch as the vastis of my agents were raided in connection with the prohibition without any reason and Dhondiba Baravkar accompanied the Police at such occasions. The members of the Prohibition Committee were also the members of the Congress who usually worked as panchas in such cases. I appeared as a pleader in some of such prohibition cases. There is a committee for distribution of iron and steel consisting of the Mamlatdar and Congressmen and the sitting member of the Legislative Assembly is a member of the Committee. The Muslims were threatened that they will be sent to Pakistan if they did not vote for the Congress. My agents and workers complained about this conduct on the part of the Congressmen. They have threatened the Harijan community also. My agent Kundalkar and Lagunkar complained to me just before the election day. One Lalbhai was the agent of the respondent No. 1 at the polling station Supa. My agent Moreswar Laddkat was working as agent at Babhurdi. Lalbhai threatened Jaywant Chandgude and Subhedar Chandgude that they must vote in favour of the Congress candidate, else they would be troubled at the time of the collecting of levy and iron and steel will not be given to them. Lalbhai is being prosecuted." Now, this evidence on the face of it is exceedingly vague and does not, in our view, in the least advance the case of the petitioner. It will be seen that the petitioner has in his evidence referred, amongst others, to Dhondiba Baravkar, L. K. Kundalkar, Moreswar Laddkat, Jaywant Chandgude and Subhedar Chandgude. Of these, only Moreswar Laddkat and Dhondiba Baravkar have been examined respectively at Exs. 110 and 129. Moreswar in his evidence says that he knows Dhondiba Baravkar, that Dhondiba Baravkar and Himat Baravkar had approached his vasti in Loni Bhapkar in connection with election work, that they threatened them and told them to vote for the Congress, otherwise they will have to face a forcible collection of levy. But he is contradicted by Dhondiba Baravkar who in his evidence at Ex. 129 deposes: "I know Moreswar Baburao Laddkat of my village. I did not go to his vasti and threatened him or anybody there, that the ration would be cut, steel and iron would not be given and raids in connection with the prohibition offences would be taken against them. The statement of Laddkat to the effect that his house was raided at 9 in connection with the prohibition offences and that I was with the Police then, is not correct." These are the only two witnesses from amongst those named by the petitioner. But evidence has been led of some witnesses other than those mentioned by the petitioner on this point in his deposition and we might make a brief reference to this evidence. This is constituted by the evidence of witnesses Exs. 111, 112, 115 and 118. Ex. 111 Ahmad says that Dhondiba and Himat visited their vasti at Loni Bhapkar and threatened that they would be sent to Pakistan if they did not vote for the Congress. In his answers to our questions he said that they took the threat seriously and thought that they would be sent to Pakistan. He admits that he did not inquire from Dhondiba and Himat as to what authority he had to transport him to Pakistan. Then Allabux (Ex. 112) says that 5 or 6 days prior to the date of the election one Jiva Kothari a Congress worker came to his mosque and exhorted the people assembled at the mosque to vote for the congress on pain of being transported to Pakistan in the event of their not doing so. He admits that among the Muslims congregation in the mosque on that day there were leaders of the community and the story told by him is that Jiva Kothari addressed the Muslim community in the mosque as in a public meeting. He also says in his evidence that a meeting in commemoration of the Paigambar was held previous to that meeting and that was presided over by a Mohamedan who had specially come down to preside over that meeting and that a resolution was adopted at that meeting to vote for the Congress and that a leaflet as per this resolution was published and circulated. The evidence of these witnesses strikes us as extremely inconsequential and the impression left on our minds, on hearing and reading the evidence, is that the threats of expatriation to which they depose are extremely unlikely to have been made, and even assuming that they were made, on the face of them they could not have amounted to anything more than a brutum fulmen. Allabux himself says that at a previous meeting their own community had solemnly resolved at a meeting to vote for the Congress

36. Then it remains to consider the evidence of two more witnesses on this point, viz., Exs. 115 and 118. Sitaram Navaji Bagde whose evidence is recorded at

Ex. 115 is a member of the Scheduled Caste and a member of Dr. Ambedkar's party. He deposes that one Jarat, an agent on behalf of the Congress asked before a collection of the members of the community to cast votes in favour of the Congress candidate on pain of ration being refused in the event of their failure to do so. And we have it from Dharmaji Dengale (**Ex. 115**) who is a Balutedar of Baramati that 5 or 6 days prior to the election, Gulabrao Patil and Mulik and Udavrao Ingule came to the Baramati Kasba and collected all the Balutedars and exhorted them to vote for the Congress and threatened them with a stoppage of rations and said that they would not give iron and steel if they failed to do so. They also repeated the threats at a subsequent meeting and he says that out of fear they all resolved to vote for the Congress. This is all the evidence with regard to the threats alleged in the petition. We are constrained to say that this evidence has not at all impressed us. We feel that there is no evidence whatever as to how the threat to deprive voters of rations and molest them in the matter of levy and in the matter of distribution of iron and steel and cloth could be executed. Nor do we think these witnesses as worthy of credit. We are unable to hold that any threats in the manner suggested were given. It is significant that there is no evidence of any complaint following the alleged threats to which these witnesses had deposed; and we have sought in vain for any reason explaining why the victims of the alleged threats reacted in such a foolish manner as to accept without question or enquiry the threats as effective and capable of being practised by the persons who are said to have threatened the voters. In these circumstances, we hold the threats not proved and, therefore, it follows that there is no case of undue influence within the meaning of Section 123 sub-clause (2), whatever made to induce us to declare the election void under any of the grounds mentioned in Section 100 of the Act.

37. Finally, we will dispose of some minor points canvassed before us by the learned counsel for the petitioner. It was said for the petitioner that at some polling stations the ballot box of respondent No. 2 was kept at serial No. 1 and at some the ballot box of respondent No. 3 was kept at serial No. 1, and in particular at Pandarc the ballot boxes of two polling booths were arranged in one manner and the ballot boxes of the third polling booth, i.e., of Chavdi in another manner. The same thing was repeated at Vadgaon Nimbaikar, Malegaon, Songaon and at Baramati. Stress was laid that the position of the ballot box of the Congress candidate, however, was always the same evidently suggesting a deliberate plan by the officers concerned with the conduct of the election to favour the chances of respondent No. 1 and to create difficulties in the way of the petitioners and other non-Congress contestants at the election. We will assume that the arrangement of the ballot boxes was not the same in all booths. All that has been suggested by the learned Advocate for the petitioner is that in some places the ballot boxes were arranged serially from left to right, whereas at other places from right to left. But it is impossible to attach any serious importance to this point, having regard first to the provision of Rule 21 sub-clause (5) which enjoins that the ballot boxes shall be placed in the polling compartment side by side in the same order in which the names of the candidates to whom such ballot boxes have been allotted, appear in the list of validly nominated candidates. It will be noted that Rule 21 does not say further that the arrangement should necessarily be either from left to right or from right to the left. That being so, we do not think that the grievance made is valid. Reference may also be made further to the evidence of the petitioner to the effect that during his visit to the various polling stations in the constituency he noticed that the ballot boxes with his name were not placed at the uniform place at the polling stations. But he himself says that he instructed the polling agents and voters to put their votes in the ballot box with the symbol of Engine and that he emphasised the symbol in connection with the voters and only if the symbol was not identifiable, then the serial number; and he goes on to say that he had accordingly actually issued a pamphlet in that regard. We, therefore, think that there is no substance whatever in this contention and we hold that it has not been made out either that the arrangement was contrary to the directions contained in Rule 21, or that the voters were in any way misled by a lack of uniformity in the arrangement of the ballot boxes in the manner already described.

38. Then it was faintly suggested that inasmuch as the ballot boxes of respondent No. 1 were repasted with symbols, the respondent No. 1 unduly benefited by this preferential treatment to the detriment, it is suggested, of the prospects of his other competitors at the election. But the petitioner has said in his evidence that he learnt about this double-pasting on the 11th and orally complained about this. The petition distantly suggests some sort of a discriminatory treatment in favour of the Congress candidate who alone, it is suggested, was allowed to see the ballot boxes. Now, the respondent No. 1 has not denied that on his ballot boxes the symbol was repasted. But he says that it was because of his complaint

to the Mamlatdar, on which the Mamlatdar after some initial reluctance redressed the grievance and told him that the symbols were being pasted again. Now evidently, this incident occurred late on the 10th, probably at night, and the suggestion made by the learned counsel for the petitioner was that if that was so, it was physically impossible to rectify the grievance overnight. And the argument further was that really and truly the pasting must have been done well beforehand in order to help the chance of the respondent No. 1. We are utterly unable to follow this argument. Even assuming that the suggestion that the repasting was done not after the 10th but very much earlier, it is impossible to imagine how the repasting by itself would be an advantage to the respondent No. 1. For aught one knows the repasting might result in the ballot boxes of respondent No. 1 being marked off from the rest and instead of favouring the chances of respondent No. 1 the repasting itself might minimise chances of error in the voting. We, therefore, think that there is no substance whatever in this contention and that it must fail.

39. These are all the contentions urged before us. In the circumstances above discussed, we do not think it necessary to pass any order as to costs. We record our finding on the issues as follows:—

Issue No. 1.—The petition is tenable.

Issue No. 2.—In the negative.

Issue No. 3.—Does not arise.

Issue Nos. 4, 5 and 6.—In the negative.

Issue No. 7.—Not pressed.

Issue No. 8.—In the negative.

Issue No. 9.—As per order.

ORDER

40. For the reasons abovestated, the petition is dismissed. No order as to costs.

(Sd.) PRAMOD C. BHAT, *Chairman,*
Election Tribunal, Poona.

(Sd.) S. B. JATHAR, *Member,*
Election Tribunal, Poona.

(Sd.) Y. K. GHASKADBI, *Member,*
Election Tribunal, Poona.

Dated, the 28th March, 1953.

[No. 19/6/52-Elec.III]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

